

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 01 June 2023 10:28
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for P-1813
Attachments: Yekatom Defence submission of evidence following the examination of P-1813

Follow Up Flag: Follow up
Flag Status: Flagged

[ICC] RESTRICTED

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of P-1813 by the Yekatom Defence and the Prosecution (*see* emails below and attached).

At the outset, the Chamber notes that items CAR-OTP-2023-2049, CAR-OTP-2068-0558, CAR-OTP-2127-6298, CAR-D29-0005-0392, CAR-OTP-2058-0573, CAR-OTP-2118-0420 and CAR-OTP-2126-0385 have already been recognised as submitted. The Chamber therefore need not rule on these items again.

The Chamber notes that the Yekatom Defence objects to the submission of CAR-OTP-2053-0576, arguing that it is testimonial in nature. In particular, it argues that ‘the unknown individual who gave this interview with the United Nations Human Rights Office of the High Commissioner [‘OHCHR’] would necessarily have understood that they were “providing information which may be relied upon in the context of legal proceedings” given that they had expressly provided their informed consent that the information be shared with “international and regional courts (e.g. ICC, international ad hoc tribunals)”. The Prosecution responds that the document is not to be regarded as a prior recorded testimony, given that ‘it is simply “Notes of the Interview” [...] [which] is in essence a report created about the circumstances and content of the interview. The document is not itself the statement of the interviewee, nor is it a statement of the interviewer – but, instead it reflects the latter’s understanding’.

The Chamber recalls that there exists a series of factors that may serve as guidelines to determine whether an out-of-court statement qualifies as testimony. In particular, a statement given to representatives of an intergovernmental organisation with a specific fact-finding mandate may be considered as testimony if the manner in which the statement was obtained left no doubt that the information might be used in future legal proceedings (*see* Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Prosecutor’s Bar Table Motion, 17 December 2010, ICC-01/04-01/07-2635, paras 42-49).

Having examined the item, the Chamber considers that it is testimonial in nature. First, the Chamber notes that the witness was interviewed by the International Commission of Inquiry-Central African Republic of OHCHR. Second, while the document itself is not the statement of the interviewee and contains certain assessments made by the drafter such as the ‘interview reliability’ or the type of alleged violation (*see* CAR-OTP-2053-0576, at 0577), the Chamber notes that the section entitled ‘Notes of the Interview’ is heavily based on factual descriptions provided by the witness during his interview, some of which he reportedly witnessed personally. The Chamber thus does not consider that the document merely reflects the drafter’s ‘understanding’, or that it is limited to a ‘report about the circumstances and content of the interview’. Third, the witness explicitly gave his informed consent that the information may be shared with international and regional courts, including the Court. In this regard, the Chamber is of the view that the interviewee gave his account with the understanding that he was ‘providing information which may be relied upon in the context of legal proceedings’ (*see also* ICC-01/14-01/18-1359, para. 19).

Therefore, the Chamber rejects the Prosecution's submission of CAR-OTP-2053-0576 through P-1813.

In light of the above, and in the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type
CAR-OTP-2023-1636	EDITION SPECIALE MBAÏKI PDTE.mpg	Audio / Video Material
CAR-D29-0006-0107	Transcription de CAR-OTP-2023-1636	Transcript
CAR-OTP-2108-0537	République Centrafricaine Atlas administratif	Map
CAR-D29-0001-0436	LOI No 97.013 Portant Code de la Famille	Legal, Administration and Court document – non ICC
CAR-D29-0013-0140	Acte de naissance n.086/03	Certificate
CAR-D29-0013-0138	Acte de naissance n.058/98	Certificate
CAR-D29-0013-0084	Duplicata Acte de naissance de [REDACTED]	Certificate
CAR-D29-0015-0010	Carte Nationale d'Identite de [REDACTED]	Identifying document
CAR-D29-0015-0033	Carte d'identite de [REDACTED]	Identifying document
CAR-D29-0001-0430	Fond de dossier CNI [REDACTED]	Legal, Administration and Court document – non ICC
CAR-D29-0016-0056	Screenshot Facebook Post Le Nouveau Centrafrique	Communication – E-message
CAR-OTP-2042-3231	Itw Kouroupe-Awo 100314 Fr.mp3	Audio / Video Material
CAR-D29-0006-0608	Transcription of CAR-OTP-2042-3231	Transcript
CAR-D29-0002-0086	Reportage pour NDEKE LUKA du 15 avril 2014	Media / press article
CAR-D29-0004-1175	[REDACTED]	Call Data Records (CDR)
CAR-D29-0004-1176	Call Sequence Table (CST) [REDACTED]	Call Data Records (CDR)
CAR-D29-0002-0080	Reportage pour NDEKE LUKA du 2 mars 2014	Media / press article
CAR-OTP-2135-2405	Formulaire de demande de participation à titre individuel	Victim application - ICC
CAR-OTP-2135-2412	Formulaire de demande de participation à titre individuel	Victim application - ICC
CAR-D29-0010-0013	Screenshot of CAR-OTP-2059-0384 01m40s	Photograph/s

In addition, the Chamber confirms that the requirements of Rule 68(3) of the Rules have been met for the following items:

Doc ID	Title	Type
CAR-OTP-2069-0035	WITNESS STATEMENT	ICC Statement - General
CAR-OTP-2118-0929	Traduction d'élément de preuve / DÉCLARATION DE TÉMOIN / WITNESS STATEMENT	ICC Statement - Translation - FRA
CAR-OTP-2083-0279	SUPPLEMENTAL WITNESS STATEMENT	ICC Statement - General
CAR-OTP-2107-6350	Traduction d'élément de preuve / COMPLEMENT DE DÉCLARATION DE TÉMOIN / SUPPLEMENTAL WITNESS STATEMENT	ICC Statement - Translation - FRA

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

Kind regards, TC V

From: OTP CAR IIB [REDACTED]
Sent: 06 December 2022 16:59
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team
 [REDACTED] V44 LRV Team OPCV [REDACTED]
 [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team
 [REDACTED]; Associate Legal Officer-Court Officer
 [REDACTED]
 [REDACTED]
 [REDACTED] >; OTP CAR IIB [REDACTED]
Subject: RE: Prosecution Submission of evidence following the examination of P-1813

Dear Trial Chamber V,
 Dear All,

The Prosecution hereby responds to the Yekatom Defence's ("Defence") opposition to the formal submission of document CAR-OTP-2053-0576, in the context of the Prosecution Submission of evidence following the examination of witness P-1813.

Contrary to the Defence claim, and as pointed out by the Presiding Judge during the examination of P-1813 (see ICC-01/14-01/18-T-180-ENG RT, timestamp 12:44:21), the document in question is not a prior recorded testimony. As indicated in the document itself, it is simply "Notes of the Interview" conducted by the United Nations Office of the High Commissioner for Human Rights ("OHCHR") with an individual whose name is redacted. As such, it is in essence a report created about the circumstances and content of the interview. The document is not itself the statement of the interviewee, nor is it a statement of the interviewer – but, instead it reflects the latter's understanding. Thus, it is not subject to rule 68, but instead governed by article 69(3) and (4), subject to the standard evidentiary criteria and weight to be assessed by the Chamber at a later stage.

The document, which is relevant and presents indicia of reliability on its face, can be submitted through witness P-1813. In fact, the latter is associated with the document, as he is familiar with the facts and circumstances described therein. This is evidenced *prima facie* by P-1813's name and telephone number mentioned in the document. Moreover, during the Prosecution's examination of P-1813 and upon questions of the Presiding Judge, the witness proved his knowledge of the facts and circumstances mentioned in the document. He confirmed having attended the two meetings referred to, and added that he presided over one of them. P-1813 also clarified and expanded on topics (acts of violence committed by Mr Yekatom's elements) that were discussed in those meetings. The witness further demonstrated knowledge of the contents of the document by providing detailed information about the "other incidents" mentioned therein, including those that occurred in Boda and Mbata.

Furthermore, contrary to the Defence's claim, the document in question is not prejudicial to the Accused Yekatom. The interest of the Accused to confront evidence that would implicate him was in fact satisfied, as the Defence had the opportunity to examine witness P-1813 on the facts and circumstances mentioned in the document — which he did not contradict. Moreover, as the document was disclosed long before the commencement of the trial, the Defence has been on notice about its content and fully had the opportunity to investigate those facts and circumstances.

Finally, the Defence's claim that the document goes to counts 26-27 and is therefore prejudicial seems to confuse the notion of prejudice to the Accused with the *relevance* of this document. A cursory assessment of both, clearly militate in favour of its submission.

Therefore, the Prosecution further requests that document CAR-OTP-2053-0576 be recognised as formally submitted.

Kind regards,

On behalf of OTP Trial Team

From: [REDACTED]
Sent: 05 December 2022 12:07
To: OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Prosecution Submission of evidence following the examination of P-1813

Dear Trial Chamber V,
 Dear all,

The Yekatom Defence (the “Defence”) hereby takes note of the Prosecution Submission of evidence following the examination of P-1813 and opposes the formal submission of CAR-OTP-2053-0576.

The Defence submits that this document is of a testimonial nature. The Defence contends that the unknown individual who give this interview with the United Nations Human Rights Office of the High Commissioner would necessarily have understood that they were ‘providing information which may be relied upon in the context of legal proceedings’ given that they had expressly provided their informed consent that the information be shared with ‘international and regional courts (e.g. ICC, international ad hoc tribunals)’ (see, under ‘Informed Consent’, at p. 0576; see also, ICC-01/14-01/18-1359 at para 16). As per the Initial Directions of the Court, such testimonial evidence is inadmissible in the absence of a Court ruling pursuant to rule 68 of the Rules of Procedure and Evidence (ICC-01/14-01/18-631 at para. 56.)

The Defence contends that the Prosecution is trying to submit a document of a testimonial nature by an inappropriate channel of submission – i.e. ‘through’ the testimony of another witness. Should the Prosecution seek to rely on this document, it must be introduced through the individual who provided the information, and pursuant to Rule 68. Further, the information found in this document is highly prejudicially to Mr Yekatom, as it goes directly to Counts 26 and 27. The fact that, as stated during the testimony of P-1813 (see ICC-01/14-01/18-T-180-FRA RT, timestamp [10:31:45] and [12:26:44]), the Defence cannot verify the accuracy of the information found in this document by investigating or examining the anonymous individual who provided this interview, further compounds the prejudice that the formal submission of this document would occasion.

For the above reasons, the Defence respectfully requests the Chamber to reject the Prosecution submission of this item.

Kind regards,

[REDACTED]
 Legal Intern

From: OTP CAR IIB [REDACTED] >
Sent: 02 December 2022 16:33
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; OTP CAR IIB <[REDACTED]>
 [REDACTED]

Subject: Prosecution Submission of evidence following the examination of P-1813

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Prosecution requests that the following items be recognised as formally submitted:

i. Documents discussed with the witness during the course of his examination by the Prosecution:

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-D29-0006-0107	P-1813	Transcript of Audio/ Video Material	28/11/22	OTP	Yes
2.	CAR-OTP-2023-1636	P-1813	Audio/ Video Material	28/11/22	OTP	Yes
3.	CAR-OTP-2053-0576	P-1813	Non ICC Statement (Note / Screening / Transcript)	28/11/22	OTP	Yes
4.	CAR-OTP-2068-0558	P-1813	Report	28/11/22	OTP	Yes

ii. Four items submitted under Rule 68(3) at the start of the witness's testimony:

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2069-0035	P-1813	ICC Statement - General	28/11/22	OTP	Yes
2.	CAR-OTP-2083-0279	P-1813	ICC Statement - General	28/11/22	OTP	Yes
3.	CAR-OTP-2107-6350	P-1813	ICC Statement - Translation - FRA	28/11/22	OTP	Yes
4.	CAR-OTP-2118-0929	P-1813	ICC Statement - Translation - FRA	28/11/22	OTP	Yes

iii. The Prosecution also seeks to submit the following items used during the course of the YEKATOM Defence's examination of the witness, to the extent these items are not submitted by the YEKATOM Defence:

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2058-0573	P-1813	Audio/ Video Material	01/12/22	OTP	Yes
2.	CAR-OTP-2118-0420	P-1813	Transcript of Audio/ Video Material	01/12/22	OTP	Yes

Kind regards,
On behalf of OTP Trial Team

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From: [REDACTED]
Sent: 02 December 2022 16:19
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D30 Ngaissona Defence Team; Associate Legal Officer-Court Officer; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; D29 Yekatom Defence Team
Subject: Yekatom Defence submission of evidence following the examination of P-1813

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions of the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Yekatom Defence requests the formal submission of the following items used during P-1813's testimony :

Count	Document ID	Title	Confidentiality Level	EVD - Date Used	WIT - Used Through	Used By	Document Type
1	CAR-D29-0001-0430	Fond de dossier CNI [REDACTED]	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Legal, Administration and Court document – non ICC
2	CAR-D29-0001-0436	LOI No 97.013 Portant Code de la Famille	Public	11/30/2022	CAR-OTP-P-1813	D29	Legal, Administration and Court document – non ICC
3	CAR-D29-0002-0080	Reportage pour NDEKE LUKA du 2 mars 2014	Confidential	12/1/2022	CAR-OTP-P-1813	D29	Media / press article
4	CAR-D29-0002-0086	Reportage pour NDEKE LUKA du 15 avril 2014	Confidential	12/1/2022	CAR-OTP-P-1813	D29	Media / press article
5	CAR-D29-0004-1175	[REDACTED]	Confidential	12/1/2022	CAR-OTP-P-1813	D29	Call Data Records (CDR)
6	CAR-D29-0004-1176	Call Sequence Table (CST) [REDACTED]	Confidential	12/1/2022	CAR-OTP-P-1813	D29	Call Data Records (CDR)
7	CAR-D29-0005-0392	Rapport de la mission parlementaire de paix et de réconciliation dans la Lobaye	Public	6/28/2022 12/1/2022	CAR-OTP-P-1813 CAR-OTP-P-1962	D29	Report
8	CAR-D29-0006-0608	Transcription of CAR-OTP-2042-3231	Public	12/1/2022	CAR-OTP-P-1813	D29	Transcript
9	CAR-D29-0010-0013	Screenshot of CAR-OTP-2059-0384 01m40s	Confidential	12/1/2022	CAR-OTP-P-1813	D29	Photograph/s
10	CAR-D29-0013-0084	Duplicata Acte de naissance de [REDACTED]	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Certificate
11	CAR-D29-0013-0138	Acte de naissance n.058/98	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Certificate
12	CAR-D29-0013-0140	Acte de naissance n.086/03	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Certificate
13	CAR-D29-0015-0010	Carte Nationale d'Identite de [REDACTED]	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Identifying document
14	CAR-D29-0015-0033	Carte d'identite de [REDACTED]	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Identifying document

15	CAR-D29-0016-0056	Screenshot Facebook Post Le Nouveau Centrafrique	Public	3/7/2022	CAR-OTP-P-1595	D29	Communication - E-message
				9/20/2022	CAR-OTP-P-1813		
				11/22/2022			
				12/1/2022	CAR-OTP-P-2353		
					CAR-OTP-P-2419		
16	CAR-OTP-2023-2049	CONF DE PRESSE CONSEILLER MOLOTO BODA.mpg	Public	6/28/2022	CAR-OTP-P-1962	D29	Audio / Video Material
17	CAR-OTP-2127-6298	Traduction / CONF DE PRESSE CONSEILLER MOLOTO BODA.mpg	Public	6/28/2022	CAR-OTP-P-1813	D29	Translation - FRA
				12/1/2022	CAR-OTP-P-1962		
18	CAR-OTP-2042-3231	Itw Kouroupe-Awo 100314 Fr.mpg	Public	12/1/2022	CAR-OTP-P-1813	D29	Audio / Video Material
19	CAR-OTP-2058-0573	Road to Genocide (The big picture behind conflict in the Central African Republic)	Public	6/24/2022	CAR-OTP-P-1813	D29	Audio / Video Material
				12/1/2022		OTP	
20	CAR-OTP-2118-0420	Transcript of Audio / Video Material / Road to Genocide (The big picture behind conflict in the Central African Republic)	Public	6/24/2022	CAR-OTP-P-1813	D29	Transcript
				12/1/2022		OTP	
21	CAR-OTP-2126-0385-R01	INVESTIGATION REPORT / Meeting with Mother of P-2582	Confidential	11/30/2022	CAR-OTP-P-1813	D29	ICC Investigation notes / report / correspondence
22	CAR-OTP-2135-2405-R02	Formulaire de demande de participation à titre individuel	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Victim application - ICC
23	CAR-OTP-2135-2412-R01	Formulaire de demande de participation à titre individuel	Confidential	11/30/2022	CAR-OTP-P-1813	D29	Victim application - ICC
24	CAR-OTP-2108-0537	République Centrafricaine Atlas administratif	Public	11/28/2022	CAR-OTP-P-1813	D29	Map
25	CAR-OTP-2127-6298	Traduction / CONF DE PRESSE CONSEILLER MOLOTO BODA.mpg	Public	6/28/2022	CAR-OTP-P-1813	D29	Translation - FRA
				12/1/2022	CAR-OTP-P-1962		

Kind regards,

[REDACTED]

On behalf of the Yekatom Defence

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